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## NEW BOOKS REVIEWED

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THE LIFE OF JOHN MARSHALL. By Albert J. Beveridge: Volumes III and IV. New York: Houghton Mifflin Company.

What impresses one most in the last half of Senator Beveridge's *Life of Marshall*, as in the two earlier volumes, is the satisfying wholeness of the work—its completeness in every part as vital historical narrative. Marshall's opinions are, to be sure, a part and an important part of the history of his times; but it is no less true that "the history of the times is a part of Marshall's greatest opinions." Realizing fully the significance of this dual relation, Senator Beveridge has re-written that part of American history in which John Marshall is the central figure, in a manner as broadly informative as it is stirring in its appeal.

The author's treatment of the case of *Marbury vs. Madison* well illustrates his general method. "Marshall's course, and indeed his opinion, in this famous case, cannot be understood without a thorough knowledge of the notable debate in Congress which immediately preceded it." It was part of the settled policy of Jefferson and the Republicans to drive the Federalists out of that last stronghold in which they had, according to the Republican view, taken refuge—the Supreme Court. Unfortunately, "the manners, language, and conduct of the judges themselves, together with their use of the bench as a political rostrum, their partizanship as to the European belligerents, their merciless enforcement of the [English] common law—aroused that public fear and hatred of the courts which gave Jefferson and the Republicans their opportunity." Just what this statement means, just how natural was the feeling of the public and how inevitable the attack upon the Judiciary, cannot really be understood without the aid of those highly illustrative and piquant facts which Senator Beveridge discerningly selects and supplies. The Federalists were over-conservative, the Republicans were hostile to the courts—these statements are scarcely instructive; they need to be given the fullest personal and political meaning before one can realize that the history to which they furnish the key is anything but a series of foregone conclusions.

Similarly, in order to understand the significance and value of American Nationality today, one must know and grasp as a human phenomenon the political strife and intrigue which surrounded the early years of the Supreme Court.

But for Federalist arrogance, Federalist hatred of France and zeal for Great Britain, Federalist laws against liberty of the press and

freedom of speech, and the harshness and insolence of Federalist judges, Marshall's opinion in *Marbury vs. Madison* "might never have been written; the Supreme Court might have remained nothing more than the comparatively powerless institution that appellate judicial establishments are in other countries; and the career of John Marshall might have been no more notable and distinguished than that of the many ghostly figures in the shadowy procession of our judicial history."

Conservatism, however, provoked the bitter Republican attack. The battle began in earnest with the debate in Congress over the repeal of the judiciary law of 1801. In his message on this subject, Jefferson had originally included a declaration that the right exists in each department "to decide on the validity of an act according to its own judgment and uncontrolled by the opinions of any other department." On better consideration, he struck out this strong passage; but the colorless words he actually used did not conceal from Fisher Ames and others his real purpose. "The message announces," wrote Ames, "the downfall of the late revision of the Judiciary; economy, the patriotism of the shallow and the trick of the ambitious. . . . The U. S. Gov't . . . is to be dismantled like an old ship. . . . The State gov'ts are to be exhibited as alone safe and salutary."

This was almost exactly true. The excellent judiciary law enacted by the Federalists in 1801 was to be repealed, "on the pretext of alleged extravagance, but in reality to oust the newly appointed Federalist judges and intimidate the entire National Judiciary." And this the Republicans were determined to do despite the deficiencies of the much over-praised Judiciary act of 1789, a law, says Senator Beveridge, which did not entirely satisfy anybody except its author, Oliver Ellsworth; a law the defects of which caused John Jay to refuse reappointment as Chief Justice.

On the floor of the Senate, the real issues gradually came out. "Let gentlemen consider well before they insist on a power in the Judiciary which places the Legislature at their feet," cried the not very discreet Republican, Breckenridge, in the enthusiasm of debate. "The candles now dimly illuminating the little Senate Chamber," narrates Senator Beveridge, "shed scarcely more light than radiated from the broad, round, florid face of Gouverneur Morris. Getting to his feet as quickly as his wooden leg would permit, his features beaming with triumph, the New York Senator congratulated 'this House, and all America, that we have at length got our adversaries upon the ground where we can fairly meet.'"

Despite mistakes in Republican tactics, however, the repeal was passed on March 3, 1802. On the 23d of April a further law was enacted which by abolishing the June session of the Supreme Court suspended the Court for fourteen months. When the Court convened in February, 1803, the case of *Marbury vs. Madison* was still pending. With the beginning of the year, too, the Republican attack entered upon another phase. The House impeached John Pickering, Judge of the United States District Court for the District of New Hampshire. In Pennsylvania a Republican House had impeached Judge Alexander Addison. The Republicans had avowed their intention to remove

Samuel Chase from the Supreme Bench, and they openly threatened to oust Marshall and his Federalist associates in case the court decided *Marbury vs. Madison* in the manner generally expected.

The decision when it came was a complete surprise. The entire National Judiciary had submitted to the repeal and was holding court under the act of 1789. All the justices of the Supreme Court except the Chief Justice held that "practice and acquiescence under it has fixed the construction." In declaring unconstitutional Section 13 of this same act, Marshall took the bull by the horns with a vengeance. "For courage, statesmanlike foresight, and, indeed, for perfectly calculated audacity," his decision of the constitutional point in *Marbury vs. Madison* "has few parallels in judicial history." Perhaps no other historian has so effectually emphasized the importance of this the first of Marshall's great opinions as has Senator Beveridge. "Were such an answer not then given, it was not certain that it could ever be made. As it turned out, but for *Marbury vs. Madison*, the power of the Supreme Court to annul acts of Congress probably would not have been insisted upon thereafter. For, during the thirty-two years that Marshall remained on the Supreme Bench after the decision of that case, and for twenty years after his death, no case came before the court where an act of Congress was overthrown; and none had been invalidated from the adoption of the Constitution to the day when Marshall delivered his epochal opinion."

It is because Senator Beveridge not merely stresses the importance of constitutional doctrines from the point of view of an able lawyer and an enlightened historian, but also supplies for them a rich interpretative setting that his accounts of Marshall's great cases are so impressive and so convincing. He combines, indeed, the broad, impersonal view of the historian with the penetration of an astute politician. Few writers of American history or biography have been qualified thus as both scholars and men of public experience. Senator Beveridge has produced a record as conscientiously complete and accurate as a thesis offered for a doctorate, but as spirited and actual as the essays of a Macaulay or the reminiscences of a Lord Rosebery. He gives us, in other words, not merely the facts of history, or comments on those facts, but the essential drama of history, in which every motive, as well as every issue, is clear. Into this drama fit personal characteristics, as in a great play. Never a man rises to speak in court or Senate, but the reader is enabled to know him and to visualize him. Pinckney, Randolph, Webster—these and many other notable persons one seems to see and hear. The reader catches the thrill of the moment, and instantaneously glimpses the great permanent issues lying behind the temporary situation.

To the understanding of every case, a brilliant analysis of the general political or economic situation is made to contribute, and thus one is able to grasp fully the truth of the statement that Marshall's opinions in the most important cases were really great state papers, and to appreciate the seeming paradox of calling Marshall a "judicial statesman."

Thus, in these volumes of the *Life of John Marshall*, the combined story of Aaron Burr's conspiracy and of the prosecution of Burr is told for the first time—a most revealing narrative. The discus-

sion of *Fletcher vs. Peck* includes a thorough account of the corrupt Georgia land legislation and its consequences. *Sturges vs. Crowninshield* is prefaced by a remarkable chapter upon the financial and moral chaos of the country in the year 1819. The political interests involved in the Dartmouth College case are fully developed. The large significance of *McCulloch vs. Maryland* is seen through the attacks upon Marshall and his doctrines which immediately followed the decision of that famous case—attacks which at length widened to take in the questions of slavery and secession. *Cohens vs. Virginia* is exhibited as “in fact a state paper designed to meet a crisis” growing out of the Missouri question. “Could John Marshall have seen into the future, he would have beheld Abraham Lincoln expounding from the stump to the farmers of Illinois, in 1858, the doctrines laid down by himself in 1819 and 1821.” A full consideration of conditions preceding and following the decision of the case of *Gibbons vs. Ogden* impressively explains and justifies the statement that “no other judicial pronouncement in history was so wedded to the inventive genius of man and so interwoven with the economic and social evolution of a nation and a people.”

History and biography are at one in the latter part of this work even more fully than in the earlier volumes. But though the inspirational and informative effect of the whole as history has been chiefly emphasized, the impression should not be left that the author has neglected the more intimate duties of a biographer. This is far from being the case. Senator Beveridge is a skilled delineator of human nature as it is not merely upon forensic occasions but in its commoner states. Every man of whom he writes he makes alive and at the same time, with the tact of a novelist, assigns to his proper position in the human scale. Thus all become interesting. The glimpse that we get, for example of the eccentric Weems, “part Whitefield, part Villon, a delightful mingling of evangelist and vagabond, lecturer and politician, writer and musician,” is more rewarding than most character sketches found in fiction. Of Marshall’s associates, Justice Story, in particular, is drawn with care and fullness, his relation to the Chief Justice serving admirably to illustrate the intellectual qualities of both men. Marshall himself, Senator Beveridge has portrayed in his social relations as well as in the discharge of his judicial duties, in his occasional moments of human weakness or wavering as well as in his heroic acts.

“We must imagine,” writes the author, “a man very much like Abraham Lincoln . . . Marshall and Lincoln were equally good politicians; but although both were conservative in their mental processes, Marshall lost faith in the people’s steadiness, moderation, and self-restraint, and came to think that impulse rather than wisdom was too often the temporary moving power in the popular mind; while the confidence of Lincoln in the good sense, righteousness, and self-control of the people became greater as his life advanced. If, with these distinctions, Abraham Lincoln were, in imagination, placed upon the Supreme Bench during the period we are now considering, we should have a good idea of John Marshall, the Chief Justice of the United States.” Unquestionably, this striking parallelism helps to give impressive unity to the story of how our nation was made.